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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/557,831

01/08/2007

Sandeep S. Dhingra

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109 7590 04/21/2009

The Dow Chemical Company  
Intellectual Property Section  
P.O. Box 1967  
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EXAMINER

WOOD, ELIZABETH D

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

04/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/557,831	<b>Applicant(s)</b> DHINGRA ET AL.	
	<b>Examiner</b> Elizabeth D. Wood	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 12-20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 3-9 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/8/06, 2/17/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

***Specification***

The examiner has not checked the specification to the extent necessary to determine the presence of **all** possible minor errors (grammatical, typographical and idiomatic). Cooperation of the applicant(s) is requested in correcting any errors of which applicant(s) may become aware of in the specification, in the claims and in any future amendment(s) that applicant(s) may file.

Applicant(s) is also requested to complete the status of any copending applications referred to in the specification by their Attorney Docket Number or Application Serial Number, **if any**.

The status of the parent application(s) and/or any other application(s) cross-referenced to this application, if **any**, should be updated in a timely manner.

***Election/Restriction***

Applicant's election with traverse of Group I, claims 1 and 3-9, in the reply filed on February 17, 2009 is acknowledged. The traversal is on the ground(s) that there is no evidence that DMC catalysts having an average particle size of 0.1 micron are known. This is not found persuasive because US 2003/0013604 discloses DMC catalysts wherein 90% of the particles preferably have a particle size in the range from 0.1 microns to 20 microns. Such recitation is considered substantially similar to and inclusive of an average particle size as claimed.

Regarding the decision in the European Patent office finding the composition to be novel and nonobvious, it is pointed out that different reasoning and procedures take place in other offices. The USPTO is not bound by the findings. Further, applicant has

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elected the process of making the composition. Therefore, as long as the examiner considers the composition to be anticipated or obvious over prior art of record in this application, the holding of a lack of unity stands. The requirement is still deemed proper and is therefore made FINAL.

### ***Allowable Subject Matter***

Claims 1 and 2-9 are allowable over the prior art of record. The herein claimed process for making DMC catalyst particles of small particle size is distinctly different from the prior art processes which employed grinding, spray-drying and freeze-drying.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

This application is in condition for allowance except for the following formal matters:

The presence of non-elected claims 10 and 12-20.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth D. Wood whose telephone number is 571-272-1377. The examiner can normally be reached on M-F, 5:30-2:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth D. Wood/  
Primary Examiner, Art Unit 1793

/E. D. W./  
Primary Examiner, Art Unit 1793

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